



USDA Forest Service Fire and Aviation Management Communication Plan



Date: December 1, 2011

Topic: Debt Collection under Reciprocal Fire Agreements.

Issue: The Office of General Counsel (OGC) issued a Memorandum on January 6, 2011, regarding Debt Collection under Reciprocal Fire Agreements. The Memorandum identifies several areas where current Forest Service (FS) directives conflict with laws regarding interest, penalties and administrative costs, as well as the due process requirements for handling outstanding debts.

The OGC Memorandum clarifies that the Debt Collection Improvement Act (DCIA) and Federal Claims Collection Standards (FCCS) allow for waiver of interest, penalties and administrative costs on a case-by-case basis only. Forest Service directives previously allowed for a blanket waiver. The Memorandum also clarifies that DCIA and FCCS apply regardless of whether they are specifically referenced in current or future agreements--and include specific due process requirements, as well as provisions regarding application of interest, penalties, and administrative costs.

Key Points:

- DCIA and FCCS do not exempt states and local entities from interest, penalties and administrative costs under reciprocal fire protection agreements.
- The collection remedies of DCIA and FCCS apply to reciprocal fire protection agreements regardless of whether they are specifically included or referenced within current or future agreements.
- DCIA and FCCS specify the due process requirements for handling debts and also delineate when interest, penalties and administrative costs will be applied to outstanding debts.
- The reconciliation process is defined as both parties (e.g. State and FS) coming to the table to present expenditures from the previous fire season (e.g. applicable/reasonable expenditures incurred during response to each other's incidents). Fire costs are reviewed to determine offset expenditures with the intent of identifying one annual billing for the entity with the remaining balance.
- The reconciliation process may not be appropriate for local fire departments or other smaller entities because of the need to be reimbursed in a timely manner.
- A transition to a reconciliation process for handling debts may minimize the application of interest, penalties and administrative costs related to debts owed by the states under cooperative fire agreements.
- The Forest Service and/or states may elect to use the reconciliation process and this language is being incorporated in the revised Cooperative Wildland Fire Management and Stafford Act Agreement template. This process is authorized in 31 U.S.C. 3171 and is successfully being used by a few states.
- If a state elects not to use the reconciliation process, reimbursement or billings would be made for each incident, and due process procedures and potential application of interest, penalties and administrative costs would apply to individual bills.

Proposed implementation of the reconciliation process would include:

1. Reconciliation process will begin on January 1 of each year that will include the previous fire season's expenditures (billing period).
2. Reconciliation and Invoicing:
 - a. The parties may mutually agree to utilize the reconciliation process.
 - b. The billing period will be on a calendar year basis (e.g. January 1 through December 31, 2011).

- c. Quarterly reports will be shared between FS and participating state/entity showing what each party owes the other.
3. At the end of the billing period and completion of the reconciliation process, a single invoice will be issued based upon any valid outstanding debt for the entity with the remaining balance.
4. Disputed expenditures by either party need to be resolved within the reconciliation process timeframe (beginning January 1, but no later than June 30 of that year).
5. If disputes cannot be resolved, any valid (allowable/allocable) debt owed the Forest Service will be forwarded to the Debt Management Branch at the Albuquerque Service Center for a determination and subsequent forwarding to Department of the Treasury (Treasury), if appropriate. The Debt Management branch will follow the due process steps required by the DCIA in handling any valid debt.

Due Process

- All due process steps will be outlined with the initial demand letter issued by the FS.
- The demand letter will include the following:
 - the basis for the debt;
 - applicable interest, penalties and administrative costs;
 - additional collection measures that may be pursued by Treasury following referral to Treasury for collection, and;
 - actions and timeline requirements to avoid interest, penalties and administrative costs.
- Three (3) Dunning notifications will occur once a bill is issued; at 30, 60 and 90-day increments.
 - The Dunning will contain information on the disputes process and the opportunity to develop a payment plan, if desired by the state/entity.
- The DCIA requires referral to Treasury at 180 days, accompanied by certification that the state/entity has been afforded the requisite due process.

Interest, Penalties and Administrative Costs:

- The interest rate is established annually by Treasury.
- FS applies an administrative cost of \$25 applied every 30th day, up to a maximum of \$75.
- The FS applies an additional per annum penalty (currently 6%) on debts not paid by 90 days of the due date, as per 31 U.S.C. 3717 (b).
- Once a referral is made, Treasury will also apply a 30% penalty to the **total** amount that is referred to Treasury (which includes the principle, fees and interest charges).

Application of Interest, Penalties and Administrative Costs:

- Waiver of any penalties, interest and administrative costs may be requested by the state/entity. Each request will be handled on a case-by-case basis.
- A blanket waiver of penalties, interest and administrative costs is not permissible.
- Procedures for requesting a waiver will be included in the demand letter, as well as each subsequent Dunning that is issued.

State debt that has been previously invoiced will not be included in the reconciliation process.

Standard Operating Guidelines will be developed outlining detailed process information, including roles and responsibilities, and signatory authorities.

This process will be shared with DOI wildland fire agencies to ensure consistency in our reconciliation processes with states and local entities.

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